compensation, even if the person receives an insubstantial gift, return service, or favor.

(2) Paragraphs (f)(1)(vi) and (vii) of this section apply only if any assistance with a return of tax or claim for refund is directly related to a controversy with the IRS for which the qualified LITC is providing assistance or is an ancillary part of an LITC program to inform individuals for whom English is a second language about their rights and responsibilities under the Code.

(3) Notwithstanding paragraph (f)(2) of this section, paragraphs (f)(1)(vi) and (f)(1)(vii) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under the Code or if the LITC charges more than a nominal fee for its services.

(4) For purposes of paragraph (f)(1)(ix) of this section, the employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, is considered the employee of the other corporation as well.

(5) For purposes of paragraph (f)(1)(x) of this section, an estate, guardianship, conservatorship, committee, or any similar arrangement for a taxpayer under a legal disability (such as a minor, an incompetent, or an infirm individual) is considered a trust or estate.

(6) *Examples.* The mechanical assistance exception described in paragraph (f)(1)(viii) of this section is illustrated by the following examples:

Example 1. A reporting agent received employment tax information from a client from the client's business records. The reporting agent did not render any tax advice to the client or exercise any discretion or independent judgment on the client's underlying tax positions. The reporting agent processed the client's information, signed the return as authorized by the client pursuant to Form 8655, Reporting Agent Authorization, and filed the client's return using the information supplied by the client. The reporting agent is not a tax return preparer.

Example 2. A reporting agent rendered tax advice to a client on determining whether its workers are employees or independent contractors for Federal tax purposes. For compensation, the reporting agent received employment tax information from the client, processed the client's information and filed the client's return using the information supplied by the client. The reporting agent is a tax return preparer.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78463, Dec. 22, 2008, as amended by T.D. 9436, 74 FR 5107, Jan. 29, 2009]

§ 301.7701–16 Other terms.

For a definition of the term ''withholding agent'' see § 1.1441–7(a). Any other terms that are defined in section 7701 and that are not defined in §§ 301.7701–1 to 301.7701–15, inclusive, shall, when used in this chapter, have the meanings assigned to them in section 7701.

(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

[T.D. 7977, 49 FR 36836, Sept. 20, 1984]

§ 301.7701–17T Collective-bargaining plans and agreements (temporary).

Q-1: How did the Tax Reform Act of 1984 (TRA of 1984) change the laws with respect to plans that are maintained pursuant to collective bargaining agreements?

A-1: (a) Many of the requirements and rules applicable to deferred compensation and welfare benefit plans are different for plans maintained pursuant to a collective bargaining agreement. Prior to the TRA of 1984, the Internal Revenue Code provided no clear definition of an employee representative or whether there is a collective bargaining agreement between such employee representative and one or more employers.

(b) Section 526(c) of the TRA of 1984 added a new condition under a new section 7701(a)(46) that must be satisfied in order for a plan to be considered to be a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers for purposes of the Code after March 31, 1984. If more than

one-half of the membership of an organization is comprised of owners, officers, and executives of employers covered by the plan, then such organization is not an employee representative for purposes of determining whether a plan is to be treated as maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers. Whether an individual is an owner, officer or executive is to be determined separately with respect to each employer. Additionally, section 7701(a)(46) provides that the Internal Revenue Service shall make the determination for purposes of the Code as to whether there is a collective bargaining agreement between employee representatives and one or more employers.

Q-2: If an organization does not fail to be an employee representative under the 50 percent or less test of section 7701(a)(46), is a plan maintained pursuant to an agreement between such organization and one or more employers necessarily treated, under the Code, as a plan maintained pursuant to a collective bargaining agreement between an employee representative and one or more employers?

A-2: (a) No.

(b) Specific Code provisions generally require other conditions than that in section 7701(a)(46) to be satisfied in order for a plan to be considered to be collectively-bargained. For example, in order for a plan to be described in section 413(a), the Secretary of Labor must find that the plan is maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers.

(c) Even if (1) the finding in the example in the preceding paragraph (b) is made by the Secretary of Labor, (2) the union has been recognized as exempt under section 501(c)(5), and (3) the percentage condition in section 7701(a)(46) is satisfied, the Internal Revenue Service has the authority, pursuant to section 7701(a)(46), to determine whether there is a collective bargaining agreement under the Code.

[T.D. 8073, 51 FR 4337, Feb. 4, 1986]

§ 301.7701(b)–0 Outline of regulation provision for section 7701(b)–1 through (b)–9.

This section lists the paragraphs contained in §§ 301.7701(b)–1 through 301.7701(b)–9.

§ 301.7701(b)–1 Resident alien.

(a) Scope.
(b) Lawful permanent resident.
(1) Green card test.
(2) Rescission of resident status.
(3) Administrative or judicial determination of abandonment of resident status.
(c) Substantial presence test.
(1) In general.
(2) Determination of presence.
(i) Physical presence.
(ii) United States.
(3) Current year.
(4) Thirty-one day minimum.
(d) Application of section 7701(b) to the possessions and territories.
(1) Application to aliens.
(2) Non-application to citizens.
(e) Examples.

§ 301.7701(b)–2 Closer connection exception.

(a) In general.
(b) Foreign country.
(c) Tax home.
(1) Definition.
(2) Duration and nature of tax home.
(d) Closer connection to a foreign country.
(1) In general.
(2) Permanent home.
(e) Special rule.
(f) Closer connection exception unavailable.
(g) Filing requirements.

§ 301.7701(b)–3 Days of presence in the United States that are excluded for purposes of section 7701(b).

(a) In general.
(b) Exempt individuals.
(1) In general.
(2) Foreign government-related individual.
(i) In general.
(ii) Definition of international organization.
(iii) Full-time diplomatic or consular status.
(3) Teacher or trainee.
(4) Student.
(5) Professional athlete.
(6) Substantial compliance.
(7) Limitation on teacher or trainee and student exemptions.
(i) Teacher or trainee limitation in general.
(ii) Special teacher or trainee limitation for section 872(b)(3) compensation.
(iii) Limitation on student exemption.
(iv) Transition rule.